

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2012-01 ST
March 6, 2013

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ISSUES

Sales and Use Tax – Licensing of Casino Game Copyrights

A company ("Taxpayer") is seeking a determination that its purchases of licenses to operate copyrighted casino games are not subject to Indiana sales or use tax when there is no tangible personal property being transferred to Taxpayer in conjunction with the licenses.

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-3-2](#); [IC 6-2.5-3-4](#); [IC 6-2.5-4](#); 6-2.5-1-27

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling:

Taxpayer operates a casino where it offers its patrons live-action table games. Many of the games at the casino were developed and copyrighted by game companies. For Taxpayer to utilize these games at its casino, it must pay a fee to license the copyright. The copyright license fees must be paid whether or not Taxpayer is also paying other fees, such as fees for the rental of equipment or for the licensing of software related to or augmenting game play. Of great relevance is the fact that there is absolutely no tangible personal property being transferred by the copyright owner to Taxpayer pursuant to the copyright licensing agreements. All that Taxpayer is receiving is the right to use the copyrighted games. Additionally, the tangible personal property that is used by Taxpayer that enables it to utilize the copyrighted materials is either rented or purchased from an entity that is completely separate from the entity which owns the copyrights on the materials to be licensed to Taxpayer.

Based on the foregoing facts, Taxpayer requests that the department make the following determination:

Neither Indiana sales nor use tax is imposed on Taxpayer's payment of fees for licenses to utilize casino games to the owner of the copyrights of such games when there is no tangible personal property being transferred to Taxpayer in conjunction with the transaction to license the aforementioned copyrights.

DISCUSSION

In general, [IC 6-2.5-2-1](#) imposes sales tax on retail transactions made in Indiana. Pursuant to [IC 6-2.5-4-1\(a\)](#), "[a] person is a retail merchant making a retail transaction when he engages in selling at retail." With the exception of certain enumerated services and intangible property found at [IC 6-2.5-4](#) (none of which are at issue here), a person is considered to be selling at retail "when, in the ordinary course of his regularly conducted trade or business, he: (1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." [IC 6-2.5-4-1\(b\)](#). (Emphasis added.)

A corresponding use tax applies to the storage, use, or consumption in Indiana of tangible personal property acquired in a retail transaction, regardless of where that transaction occurred or where the retail merchant was located. [IC 6-2.5-3-2\(a\)](#). (Emphasis added.) The use tax is complementary to the sales tax in that the use tax applies only to transactions that are or would be subject to the sales tax but have somehow avoided it. [IC 6-2.5-3-4\(a\)\(1\)](#). However, if the sales tax was paid on the acquisition of the property or the property was acquired in a transaction that is wholly or partially exempt from the sales tax under any part of [IC 6-2.5-3](#), except [IC 6-2.5-5-24\(b\)](#), and the property is being used, stored, or consumed for the purpose for which it was exempted, use tax is not applicable. [IC 6-2.5-3-4\(a\)](#).

Of great relevance is that, according to the plain language of the statutes, only the retail sale and use of tangible personal property is subject to sales and use taxes. See [IC 6-2.5-2-1](#), 6-2.5-4-1(b), 6-2.5-3-2(a). Pursuant to [IC 6-](#)

[2.5-1-27](#), "[t]angible personal property means personal property that: (1) can be seen, weighed, measured, felt, or touched; or (2) is in any other manner perceptible to the senses. The term [tangible personal property] includes electricity, water, gas, steam, and prewritten computer software."

In the instant case, based upon the facts as represented in Taxpayer's correspondence, neither Indiana sales nor use tax applies to the payment of the copyright licensing fees by Taxpayer. The licenses to use the copyrighted games at Taxpayer's casino simply do not constitute "tangible personal property" per [IC 6-2.5-1-27](#). Moreover, there is no tangible personal property being transferred pursuant to the copyright licensing agreements. As represented by Taxpayer, the tangible personal property being employed by Taxpayer to enable it to make use of the copyrighted materials is procured from an entity that is completely unrelated to the owner of the copyrights. Thus, the transactions in question are not subject to Indiana sales or use tax.

RULING

Taxpayer's purchases of licenses to operate copyrighted casino games are not subject to Indiana sales or use tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that, subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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